IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/08/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 9961 OF 1996
and
W.P.M.P.No. 13111 OF 1996

1. K. Durairaj
2. C. Columbus David Selvaraj
3. S. Thavasimuthu
4. V. Baboo .. Petitioners

-Vs-

1. The Registrar of Co-operative
Societies,
Thalamauthu Natarasan Building,
Madras 600 010.

2. The Regional Joint Registrar
of Co-operative Societies,
Kanyakumari Region,
Nagercoil.

3. Kanyakumari District Central
Co-operative Bank,
rep. by its Special Officer,
Nagercoil,
Kanyakumari District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr. N. Paul Vasanthakumar

For Respondents 1-2: Mrs.N.G. Kalaiselvi,
Special Govt. Pleader

For Respondent-3 : Mr.A. Selvaraj

:O R D E R

Heard the learned counsels appearing for the parties.

2. The facts giving rise to the present writ petition are as follows :-

Petitioners were employed under the Kanyakumari District Central Co-operative Bank. Due to want of vacancy at the relevant time, they were removed from service before 1980. Subsequently when fresh vacancies arose, they were given fresh appointment, obviously following the principles laid down in Section 25H of the Industrial Disputes Act. Thereafter the first respondent, namely the Registrar of Cooperative Societies had issued a direction to the third respondent to remove the petitioners from service and pursuant to such direction, third respondent has removed the petitioners from service. The orders passed by the respondents 1 & 3 are being challenged by the petitioners in this writ petition.
By virtue of stay order passed by the High Court, the petitioners re still continuing in service.

2. Learned counsel appearing for the petitioners has submitted that when the petitioners were re-employed under Section 25H of the Industrial Disputes Act, there was no justification for the first respondent to give direction to remove the petitioner from service.

3. In the counter affidavit filed on behalf of the respondents 1 & 2 it has been contended that the names of the petitioners have not been sponsored by the employment exchange and therefore, the directions have been issued for removing the petitioners from service.

4. It is not disputed that at the time of initial appointment in Seventies, the names of the petitioners had been sponsored by the employment exchange and their appointment was on regular basis, but they were retrenched due to lack of vacancies.

5. Section 25H of the Industrial Disputes Act is as follows :
25H. Re-employment of retrenched workmen.-Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall , in such manner as may be prescribed, give anÿÿ opportunityÿ [to the retrenched workmen who are citizens of India to offer themselves for re-employment,ÿÿ and such retrenched workmen] who offer themselves for re-employmentÿ shall have preference over other persons.

6. The respondents have placed reliance upon Rule 149(6)(c) of the Co-operative Societies Rules which is extracted hereunder :-

“ 149(6)(c) – It shall be competent for the appointing authority to terminate the services of an employee before the expiry of six months of his service, if his work or conduct have not been satisfactory. No appeal shall lie against an order terminating the probation of an employee during this period.”

7. The reliance placed upon Rule 149(6)(c) of the Co-operative Societies Rules appears to be unjustified. As has been rightly contended, since there was no defect in the initial appointment of the

petitioners, their subsequent re-employment under Section 25H cannot be held to be improper merely because their names were not sponsored by the employment exchange at the time of re-employment. Section 25H itself contemplates that a person who is retrenched shall have preference over other persons. The provisions contained under the Industrial Disputes Act no where contemplate that at the time of re-employment the appointment should be through employment exchange.

8. Learned counsel appearing for the first respondent also submitted that Rule 149(6)(c) contemplates that the appointing authority can terminate services of an employee before the expiry of six months of his service. But, the rule itself contemplate that such termination can be for unsatisfactory work and not for the reason that at the time of re-employment of the petitioners under Section 25H, they have not been sponsored through employment exchange.

9. For the aforesaid reasons, I allow the writ petition and quash the orders passed by the respondents 1 & 3. The petitioners shall be deemed to be in service and they shall be now given annual increments and other service benefits considering that the order of termination was non-existence. Arrears may be paid within a period of four months from the date of the communication of the order. Consequently, the W.M.P.No.13111 of 1996 is closed.

Index : Yes
Internet: Yes
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To

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